

COMMUNITY DEVELOPMENT DEPARTMENT CITY ATTORNEY'S OFFICE IMPACTS OF THE 2017 HOUSING LEGISLATION

Where We Are and Where We are Going

2017 California Housing Package

Streamline
Housing
Development
3 bills

Accountability
and
Enforcement
6 bills

Create and
Preserve
Affordable
Housing
5 bills

<http://www.hcd.ca.gov/policy-research/lhp.shtml>

The Heavy Hitters

- Housing Accountability Act (SB 167/AB 678 & 1515)
- Streamline Ministerial Approval Process (SB 35)
- No Net Loss Housing (SB 166)

HOUSING ACCOUNTABILITY ACT

Assembly Bill 678/Senate Bill 167

A Critical Problem....

Nearly 30 years ago the state legislature declared that the California's lack of housing "is a critical problem that threatens the economic, environmental, and social quality of life in California"

and that

"[t]he excessive cost of the state's housing supply is partially **caused by activities and policies of many local governments** that limit the approval of housing, increase the cost of land for affordable housing, and require that high fees and exactions be paid by producers of potentially affordable housing." (1990)

A Long Time Coming...

Going From Critical to Crisis

“California has a housing supply and affordability crisis of historic proportions. The consequences of failing to effectively and aggressively confront this crisis are hurting millions of Californians, robbing future generations of the chance to call California home, stifling economic opportunities for workers and businesses, worsening poverty and homelessness, and undermining the state's environmental and climate objectives.”

Purpose

Significantly increase the approval and construction of new housing...by meaningfully and effectively **curbing the capability of local governments to deny, reduce the density for, or render infeasible** housing development projects...

Gov't Code § 65589.5 (a) (1) (K)

Applicability

- Nearly all multi-unit housing projects and emergency shelters including:
 - Residences only
 - Transitional and supportive housing
 - Mixed use (at least 2/3 residential)



No Reduction in Density

If a project complies with “**objective**” general plan, zoning, and subdivision standards and criteria, **including design review standards**, the City cannot reduce its density.

Gov't Code § 65589.5 (j) (1)

So What's Objective?

Standards that **involve no personal or subjective judgement by a public official** and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant ...and the public official prior to submittal. *Gov't Code § 65913.4 (5)*

Unless...

City makes the following findings supported by a **preponderance** of the evidence:

- The Development would have a specific, adverse impact on public health & safety unless it was denied or reduced in density; **and**
- No feasible method exists to mitigate or avoid the adverse impact

Specific, Adverse Impact Defined

A significant, quantifiable, direct, and unavoidable impact, based on objective, identified, written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete...

Gov't Code § 65589.5 (j) (1) (A)

What Constitutes a Reduction?

“Lower density” includes any condition that would have the same effect or impact on the ability to provide housing.

Limitations

- CEQA still applies
- Coastal Act
subjective criteria
must still be met



Gov't Code Amendments 2018

Tightens Definition of “Objective Standards”

- Consistent if substantial evidence allows a reasonable person to conclude compliance



Gov't Code Amendments 2018

Application Processing Requirements



- If deemed inconsistent, City must inform applicants within 30 or 60 days, depending on number of units
- If timeline is not met, project is legally deemed consistent

Gov't Code Amendments 2018

Increased Authority of the Courts

- If project denial or conditional approval is successfully challenged in court:
 - City must take action within 60 days and pay plaintiff's attorney fees



Gov't Code Amendments 2018

Penalties

- If City fails to comply within 60 days:
 - Fined a minimum of \$10,000 per unit
- If City acted in bad faith:
 - Ordered to directly approve the project
 - Fines multiplied by a factor of five



Housing Accountability Act

Example – Replace one house with three units

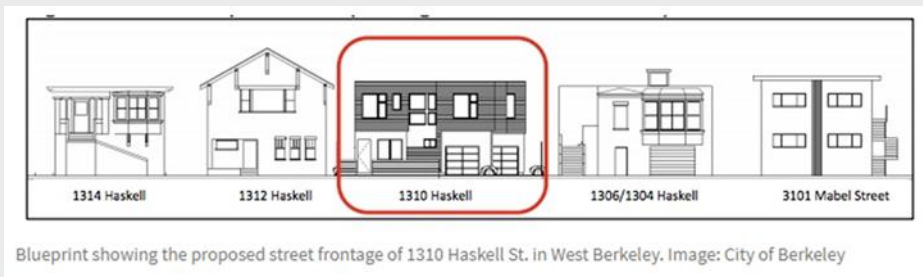
- Approved by Zoning Board
- Neighbors appeal granted by City Council
- Lawsuit filed - settlement requires rehearing and compliance with HAA



Housing Accountability Act

Example – Replace one house with three units

- Project rejected again at rehearing, but not on the basis of specific, adverse impact
- Another lawsuit filed, judge rules City did not make required findings
- Project approved and City required to pay attorney fees up to \$44,000



HOUSING STREAMLINING

Senate Bill 35

SB 35 – Housing Streamlining

Gov't Code § 65913.4

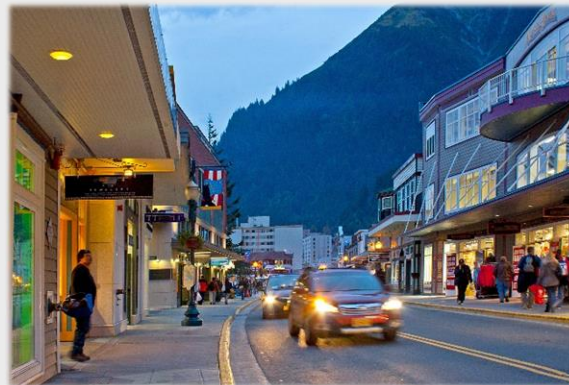
- Facilitate and expedite housing construction
- Requires a streamlined, ministerial approval process for qualified projects in jurisdictions that have not met Regional Housing Need Allocation (RHNA)
 - **Including City of Santa Barbara**

RHNA Progress 2014-2017

Income Group	RHNA Units	Number Permitted	Percent
Very Low	962	61	6%
Low	701	36	5%
Moderate	820	4	0.5%
Above Moderate	1,617	566	35%
TOTAL	4,099	667	16%

SB 35 – Eligible Projects

- Multi-unit infill rental and for sale housing (of at least two units)
- Mixed Use requires at least 2/3 residential



SB 35 – Eligible Projects

- Projects greater than 10 units
 - 10% affordability
 - Prevailing Wage
- Consistent with objective zoning, subdivision, and design review standards

SB 35 Design Review

- Allowed but limited to project conformity to reasonable *objective* design standards
- If Design Review is used, must be completed:
 - Within 90 calendar days of submittal for project less than 150 units
 - Within 180 calendar days of submittal for projects greater than 150 units

SB 35 Exclusions

- Coastal Zone
- Wetlands, Protected Species Habitats, Conservation Lands
- Hazardous Waste Site
- Mobilehome/RV Parks

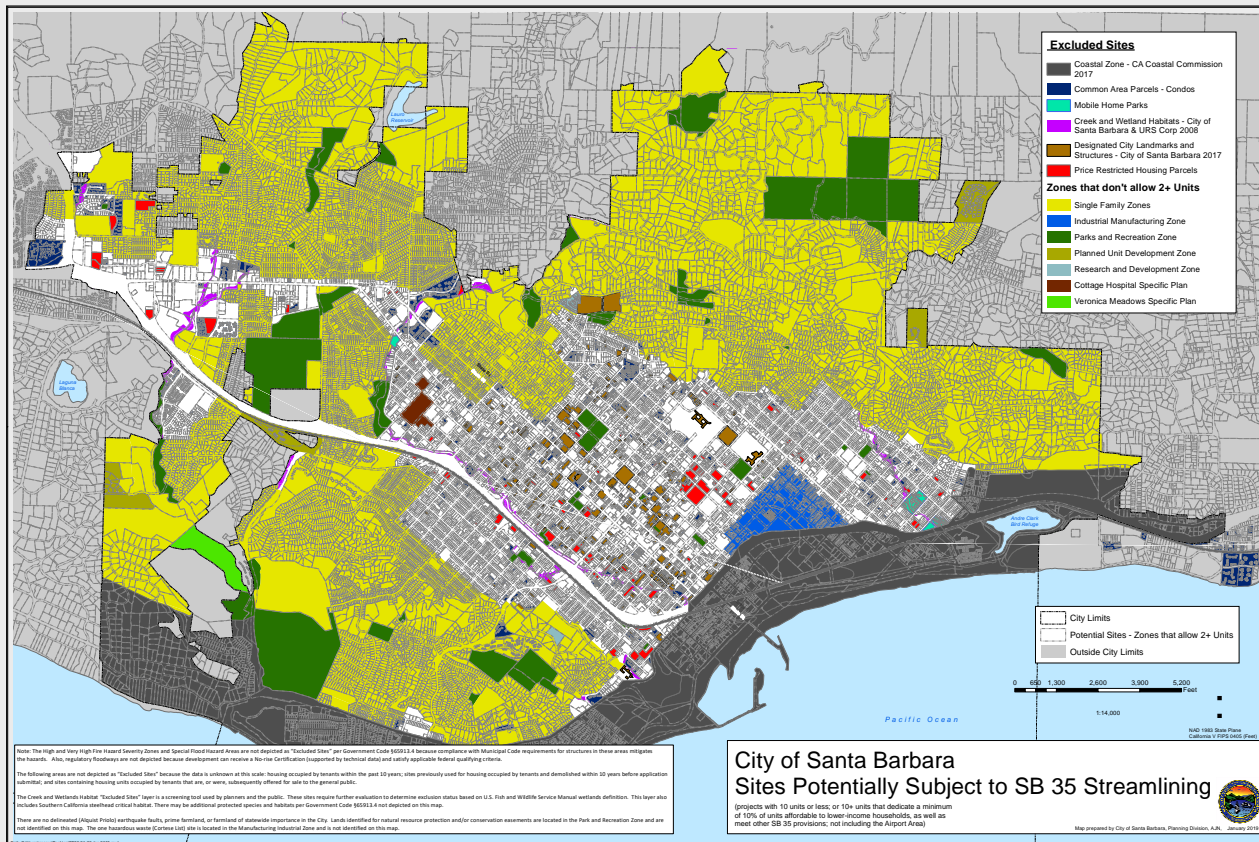


SB 35 Exclusions

Project cannot require demolition of:

- Housing subject to rent restrictions/price controls
- Housing occupied by tenants within the past 10 years
- Historic structure (national, state, or local register)





City of Santa Barbara Sites Potentially Subject to SB 35 Streamlining

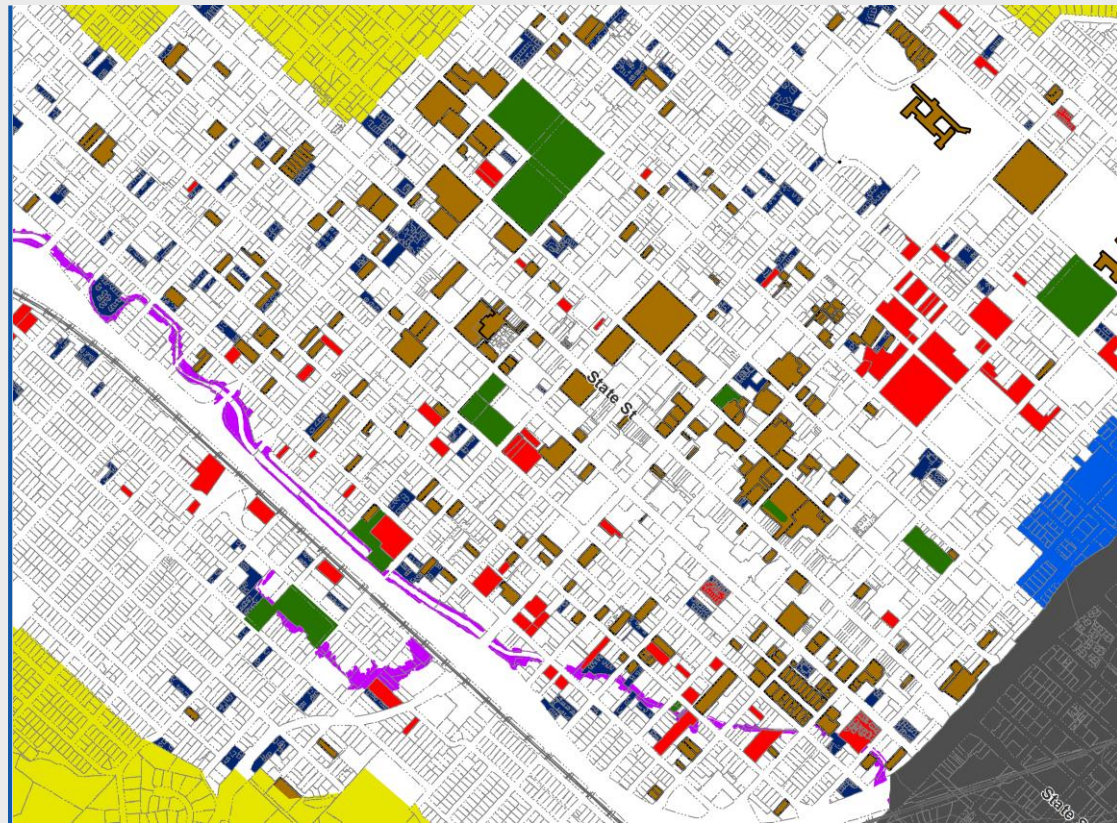
(projects with 10 units or less; or 10+ units that dedicate a minimum of 10% of units affordable to lower-income households, as well as meet other SB 35 provisions; not including the Airport Area)



Map prepared by City of Santa Barbara, Planning Division, A/E, January 2018

Downtown Potential Sites

Many fewer sites
available than
depicted due to
rental property
exclusion



SB 35 Parking Requirements

- At most, one space per dwelling unit
- No parking required if:
 - Located within ½ mile of public transit
 - Within an architecturally or historically significant district
 - Within one block of car share vehicle
 - In areas where street parking permits are required but not offered to the project's occupants

Design Guidelines vs. Standards

ABR Design Guidelines

- Provide articulation to reduce the apparent mass and scale of the building, and to be sensitive to the neighborhood.

City of Fremont “Design Rules”

- For every 100 feet of building length, there shall be a plane-break along the façade comprised of an offset of at least five feet in depth by 25 feet in length. The offset shall extend from grade to the highest story.

SB 35 Example Vallco Town Center

- City determined project was eligible for streamlined review within 90 days
- No specific objective design standards were available or used
- Project approved within 180 days



<https://www.cupertino.org/home/showdocument?id=22962>

NO NET LOSS

(SB 166)

Gov't Code § 65863

Maintaining Housing Element Inventory

- The City must ensure that its housing element inventory can accommodate **“at all times throughout the planning period”** its remaining unmet RHNA numbers.
- City cannot take any action that would cause it to be insufficient to meet its RHNA share for “lower and moderate income households.”

Income Group	Number of Units	Percentage
Very Low Income:	962*	23%
Low Income:	701	17%
Moderate Income:	820	20%
Above Moderate:	1,617	39%
Total Units	4,099	100%

SBCAG 2014-2022 Regional Housing Needs Plan

** Extremely Low units make up 50% of the very low income unit allocation*

No Reduction in Density

Cannot reduce residential density of a parcel or approve a project at less than its assigned density unless:

- The action is consistent with the City's General Plan and Housing Element (HE); and
- The remaining sites identified in the HE are adequate to meet RHNA at every income level.

No Reduction in Units

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Identifying Alternative Density Sites

If the City Approves a project at less than the designated density it must:

- Within 180 days from project approval
- Identify other replacement property to meet RHNA

ENFORCEMENT

Gov't Code § 65585: The Watchdog

- HCD “shall” review any action or failure to act by the City that it determines is inconsistent with Housing Element
- Written findings issued to City if found inconsistent
- Cities have 30 days to respond
- Decertify Housing Element

Enforcement

HCD may advise the Attorney General of actions inconsistent with housing element or violations of:

- Housing Accountability Act
- No Net Loss Housing Law
- State Density Bonus Law
- Housing Anti-Discrimination Law

CONCLUSION

Where do we go from here?

Complying with State Legislation

- Public outreach and education
- Identify successful designs to emulate for design standards
- Draft objective design standards for multi-unit housing
- Update codes/procedures to comply with new laws

Work Program Overview

Milestone	Timeline
Initiate Project, Conduct Research	Winter 2019
Informational Presentations	February 2019
Draft Code Amendments and Design Standards	Spring 2019
ABR/HLC Review and Comment	Summer 2019
PC, Ordinance Committee, and City Council Review and Adoption	Fall/Winter 2019

